

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:	Bankruptcy Nos.	00-32002-GFK 00-32012-GFK 00-32011-GFK 00-32486-GFK
Millenium Properties, LLC, a Minnesota limited liability company, Senior Cottages of America, LLC, Senior Cottage Management, LLC, and Murray Klane, an individual,		

Timothy D. Moratzka,
Trustee in Bankruptcy Estate of Millenium
Properties, LLC, et al.,

Plaintiff,

**Adversary Nos. 04-3322
04-3323
04-3324
04-3325**

vs.

ANSWER

Guilford Capital Corporation, an Alabama
corporation, et al.,

Defendants.

Defendants, for their answer to Plaintiff's Complaint, state:

1. Defendants deny every allegation contained in the Complaint, except as may be expressly admitted herein.
2. In response to paragraph 1 of the Complaint, Defendants state that the purported causes of action set forth in the Complaint speak for themselves.
3. Defendants do not have sufficient information to form a belief concerning the truth or falsity of the allegations contained in paragraphs 2 through 5 of the Complaint. Accordingly, Defendants deny those allegations.
4. Defendants admit, upon information and belief, paragraph 6 of the Complaint.

5. In response to paragraph 7 of the Complaint, Defendants admit that Cottages of Frankfort, Ltd. (the “Frankfort Partnership”) is a Kentucky limited partnership. Defendants deny that the Frankfort Partnership was made a Defendant in this action. Defendants admit that at one time Frankfort Cottages Development, LLC (“Frankfort Development”) purported to be the general partner of the Frankfort Partnership and was removed from that position. Defendants do not have sufficient information to form a belief concerning the truth or falsity of the remaining allegations contained in paragraph 7 of the Complaint. Accordingly, Defendants deny those allegations.

6. In response to paragraph 8 of the Complaint, Defendants admit that Guilford Capital Corporation (“Guilford Capital”) is an Alabama corporation having its principal place of business in Alabama. Defendants deny every other allegation contained in paragraph 8 of the Complaint.

7. In response to paragraph 9 of the Complaint, Defendants admit that Guilford Tax Credit Acquisition Fund, Ltd. (“GTCAF”) is an Alabama limited partnership. Defendants deny every other allegation contained in paragraph 9 of the Complaint.

8. In response to paragraph 10 of the Complaint, Defendants admit that Guilford C.F., L.L.C. (“Guilford C.F.”) is an Alabama limited liability company engaged in the business of providing loans to qualified borrowers in connection with commercial properties and single and multi-family housing. Defendants deny every other allegation contained in paragraph 10 of the Complaint.

9. Defendants admit paragraph 11 of the Complaint.

10. Defendants deny the first sentence of paragraph 12 of the Complaint. Defendants admit the second sentence of paragraph 12 of the Complaint. Defendants deny the third sentence

of paragraph 12 of the Complaint and state that Defendants do not consent to the bankruptcy court entering a final order or judgment in this non-core proceeding.

11. Paragraphs 13 through 17 of the Complaint contain general statements of tax law to which no response is required.

12. In response to paragraph 18 of the Complaint, Defendants admit that because the project received an initial reservation of 1996 tax credits, it was required to be completed by December 31, 1998, or the project's tax credit reservation may have been cancelled. Defendants do not have sufficient information to form a belief concerning the truth or falsity of the allegations contained in the first sentence of paragraph 18. Accordingly, Defendants deny those allegations. Defendants deny all other allegations contained in paragraph 18 of the Complaint.

13. Paragraphs 19 and 20 of the Complaint contain general statements of "industry practice" to which no response is necessary. In the event that it could be determined that a response is necessary, Defendants deny those allegations.

14. Defendants admit paragraph 21 of the Complaint.

15. In response to paragraphs 22 and 23 of the Complaint, Defendants state that the Special Agreement speaks for itself. Defendants deny Plaintiff's incomplete and incorrect characterization of the Special Agreement.

16. In response to paragraphs 24 through 27 of the Complaint, Defendants admit that Guilford Capital and Senior Cottages of America, LLC ("SCA"), executed a letter dated November 17, 1997, having an accompanying term sheet. Defendants state that the documents speak for themselves. Defendants deny Plaintiff's incomplete and incorrect characterization of the documents. Defendants admit that Frankfort Development purported to become the general partner of the Frankfort Partnership, which is reflected in the term sheet dated July 27, 1998, and

the First Amended and Restated Certificate and Agreement of Limited Partnership of Cottages of Frankfort, Ltd. Defendants deny every other allegation contained in paragraphs 24 through 27 of the Complaint.

17. In response to paragraph 28 of the Complaint, Defendants admit that in or about August 1998, Guilford C.F. and the Frankfort Partnership executed an Amended and Restated Master Future Advance Secured Promissory Note dated December 10, 1997. Defendants state that the document speaks for itself. Defendants deny Plaintiff's incomplete and incorrect characterization of the document. Defendants deny every other allegation contained in paragraph 28 of the Complaint.

18. Defendants do not have sufficient information to form a belief concerning the truth or falsity of the allegations contained in paragraph 29 of the Complaint. Accordingly, Defendants deny those allegations.

19. In response to paragraph 30 of the Complaint, Defendants admit that in or about August 1998, Guilford C.F. and the Frankfort Partnership executed an Amended and Restated Master Future Advance Secured Promissory Note dated January 7, 1998. Defendants state the document speaks for itself. Defendants deny Plaintiff's incomplete and incorrect characterization of the document. Defendants deny every other allegation contained in paragraph 30 of the Complaint.

20. Defendants do not have sufficient information to form a belief concerning the truth or falsity of the allegations contained in paragraph 31 of the Complaint. Accordingly, Defendants deny those allegations.

21. Defendants admit paragraph 32 of the Complaint.

22. In response to paragraphs 33 and 34 of the Complaint, Defendants state that the Amended Development Agreement speaks for itself. Defendants deny Plaintiff's incomplete and incorrect characterization of the Amended Development Agreement.

23. Defendants do not have sufficient information to form a belief concerning the truth or falsity of the allegations contained in paragraph 35 of the Complaint. Accordingly, Defendants deny those allegations.

24. In response to paragraph 36 of the Complaint, Defendants admit that in April of 1998, the Frankfort project was behind schedule and the land was within days of being sold at a sheriff's foreclosure sale. Defendants deny every other allegation contained in paragraph 36 of the Complaint.

25. Defendants deny paragraphs 37 through 41 of the Complaint.

26. In response to paragraph 42 of the Complaint, Defendants admit that on or about July 27, 1998, Frankfort Development and Guilford Capital executed a letter with an accompanying term sheet. Those documents speak for themselves. Defendants deny Plaintiff's incomplete and incorrect characterization of the documents. Defendants admit that Guilford Mortgage Corporation agreed, subject to conditions, to provide construction and permanent financing for the Frankfort Project. Defendants deny every other allegation contained in paragraph 42 of the Complaint.

27. Defendants do not have sufficient information to form belief concerning the truth or falsity of the allegations contained in paragraph 43 of the Complaint. Accordingly, Defendants deny those allegations.

28. In response to paragraph 44 of the Complaint, Defendants admit that at some point in time Trantum Fitzpatrick and Murray Klane met in Lanett, Alabama, at Mr. Fitzpatrick's

request to discuss the status of the Frankfort Project. Defendants deny every other allegation contained in paragraph 44 of the Complaint.

29. In response to paragraphs 45 through 47 of the Complaint, Defendants admit that GTCAF, the Frankfort Partnership, Frankfort Development and SCA executed a First Amended and Restated Certificate of Limited Partnership of Cottages of Frankfort, Ltd. The terms of that document speak for themselves. Defendants deny Plaintiff's incomplete and incorrect characterization of the document. Defendants deny every other allegation contained in paragraphs 45 through 47 of the Complaint.

30. Defendants do not have sufficient information to form a belief concerning the truth or falsity of the allegations contained in paragraph 48 of the Complaint. Accordingly, Defendants deny those allegations.

31. Defendants deny paragraph 49 of the Complaint.

32. In response to paragraph 50 of the Complaint, Defendants admit that on or about December 7, 1998, Guilford Capital delivered to SCA a notice terminating the Special Agreement. That notice speaks for itself. Defendants deny Plaintiff's incomplete and incorrect characterization of the notice.

33. In response to paragraph 51 of the Complaint, Defendants admit that on or about December 7, 1998, the Frankfort Partnership delivered to SCA a notice terminating the Amended Development Agreement. That notice speaks for itself. Defendants deny Plaintiff's incomplete and incorrect characterization of the notice.

34. In response to paragraph 52 of the Complaint, Defendants admit that on or about December 7, 1998, GTCAF removed and expelled Frankfort Development from the Frankfort Partnership. GTCAF's Notice of Removal speaks for itself.

35. Defendants deny paragraph 53 of the Complaint.
36. Defendants admit paragraph 54 of the Complaint and affirmatively allege that no such payment was due.
37. Defendants deny paragraphs 55 through 57 of the Complaint.
38. In response to paragraph 58 of the Complaint, Defendants restate their responses to paragraphs 1 through 57 of the Complaint.
39. Defendants deny paragraphs 59 through 61 of the Complaint.
40. In response to paragraphs 62 of the Complaint, Defendants restate their responses to paragraphs 1 through 61 of the Complaint.
41. Defendants deny paragraphs 63 and 64 of the Complaint.
42. In response to paragraph 65 of the Complaint, Defendants restate their responses to paragraphs 1 through 64 of the Complaint.
43. Paragraph 66 of the Complaint contains general allegations of contract law to which no response is required. In the event that it could be determined that a response is required, Defendants deny the allegations.
44. Defendants deny paragraphs 67 and 68 of the Complaint.
45. In response to paragraph 69 of the Complaint, Defendants restate their responses to paragraphs 1 through 68 of the Complaint.
46. Defendants deny paragraphs 70 and 71 of the Complaint.
47. In response to paragraph 72 of the Complaint, Defendants restate their responses to paragraphs 1 through 71 of the Complaint.
48. Defendants deny paragraphs 73 and 74 of the Complaint.

AFFIRMATIVE DEFENSES

49. The Complaint fails to state a claim upon which relief can be granted.

50. Plaintiff lacks standing and is not the real party in interest to pursue all or part of the causes of action asserted herein.

51. The Court lacks personal jurisdiction over Defendants.

52. The Complaint is barred in whole or in part by the doctrines of waiver, estoppel, laches and unclean hands.

53. The Complaint is barred in whole or in part by the doctrines of setoff and/or recoupment.

54. The Complaint is barred in whole or in part by the debtors' material breaches of contract.

55. The Complaint is barred in whole or in part by insufficiency of service of process.

56. The Complaint is barred in whole or in part by the statutes limitation or repose.

57. The Complaint is barred in whole or in part by accord and satisfaction.

WHEREFORE, Defendants request judgment of the Court as follows:

1. Dismissing the Complaint with prejudice and ordering that Plaintiff shall recover nothing from Defendants;

2. Awarding Defendants recovery of their costs and disbursements incurred herein, including reasonably attorneys' fees; and

3. Awarding Defendants any other relief that the Court deems equitable.

Dated: September 13, 2004

FABYANSKE, WESTRA & HART, P.A.

By /s/ Richard G. Jensen
Paul L. Ratelle (#127632)
Richard G. Jensen (#18990X)
800 LaSalle Avenue, Suite 1900
Minneapolis, MN 55402
(612) 338-0115
ATTORNEYS FOR DEFENDANTS

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

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Millenium Properties, LLC, a Minnesota limited liability company, Senior Cottages of America, LLC, Senior Cottage Management, LLC, and Murray Klane, an individual,		

Timothy D. Moratzka,
Trustee in Bankruptcy Estate of Millenium
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Plaintiff,

**Adversary Nos. 04-3322
04-3323
04-3324
04-3325**

vs.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Guilford Capital Corporation, an Alabama
corporation, et al.,

Defendants.

I, Susanne M. Hoffman, of Fabyanske, Westra & Hart, P.A., attorneys licensed to practice law in this court, with their office address at 800 LaSalle Avenue, Suite 1900, Minneapolis, Minnesota, declares under penalty of perjury that on the 13th day of September, 2004, I served the Answer of Defendants in the above captioned Adversary Proceeding on each person referenced below, by placing a true and correct copy thereof in sealed envelopes, postage prepaid and depositing the same in the U.S. Mails at Minneapolis, Minnesota, addressed as follows:

United States Trustee 1015 U.S. Courthouse 300 South Fourth Street Minneapolis, MN 55415	Timothy Moratzka Mackall, Crouse & Moore, PLC 1400 AT&T Tower 901 Marquette Avenue Minneapolis, MN 55402
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And I declare, under penalty of perjury, that the foregoing is true and correct. Dated this 13th day of September, 2004.

/e/ Susanne M. Hoffman _____